

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
D.P. MARSHALL, JR., JUDGE

DIVISION II

CACR07-213

16 January 2008

DEREK SALES,

APPELLANT

v.

STATE OF ARKANSAS,

APPELLEE

AN APPEAL FROM THE BRADLEY  
COUNTY CIRCUIT COURT

[CR2005-86-3]

THE HONORABLE ROBERT BYNUM  
GIBSON JR., CIRCUIT JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

Armed with a soap-filled sock and lotion bottles full of hot sauce, Derek Sales and Jesus Morales made a Christmas Eve break from the Warren City Jail. Police officers caught Sales, and a jury convicted him of battery, escape, and attempted possession of a firearm by a felon. On appeal, his lawyer has filed a no-merit brief and moved to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967) and Arkansas Supreme Court Rule 4-3(j)(1). Sales did not file pro se points on appeal. We affirm the convictions and grant the motion.

On Christmas Eve 2005, Jailer Arnold Murphy released Sales and Morales from their jail cells for a short time while another officer distributed hard candy to them. Then Murphy tried to put them back in their cells. Sales, however, shoved him against a wall, and the two men tried to escape. As Sales ran through the dispatch room, he fought with Van Clark, the uniformed officer who was on duty that night. During the scuffle, Sales grabbed Clark's holstered gun (but did not take it) and hit Clark in the head with an object, causing a hairline fracture. Sales and Morales ran out of the jail.

Sales's weapon—a sock with his name on it containing small bars of soap—was recovered on the street in front of the jail. After being recaptured by police, Sales told them that he and Morales had been planning the escape for about two months.

Viewing that record in the light most favorable to the State, substantial evidence supports Sales's convictions. *Williams v. State*, 329 Ark. 8, 16, 946 S.W.2d 678, 682 (1997). First, the evidence shows that Sales—with help from Morales—used physical force to escape from the Warren City Jail. Ark. Code Ann. § 5-54-110(a)(1) (Repl. 2005). Second, as he ran out of the jail, Sales intentionally or knowingly and without legal justification injured Officer Clark, whom he knew to be a law enforcement officer acting in the line of duty. Ark. Code Ann. § 5-13-202(a)(4)(A)(i) (Repl. 2006). Officer Clark was certain that Sales, not Morales, hit him because the blow came from the front and Clark never saw Morales. Third, Sales stipulated to the fact that he had at least one felony conviction. That fact, coupled with the State's evidence that Sales grabbed Officer Clark's gun during the scuffle, is sufficient to support his attempted-felon-in-possession conviction. Ark. Code Ann. § 5-73-103(a)(1) (Repl. 2005); Ark. Code Ann. § 5-3-201 (Repl. 2006).

Nor did the circuit court abuse its discretion by denying Sales's motion to delay the trial so that a new lawyer could defend him. *Robinson v. State*, 317 Ark. 407, 408, 878 S.W.2d 405, 406 (1994). The private counsel that Sales wished to substitute had neither entered his appearance nor notified the court of the substitution by the morning of the trial. Thus the circuit court did not err in denying Sales's motion for a continuance.

Nor did the circuit court err by refusing to instruct the jury on a lesser-included offense. There was no rational basis for a verdict acquitting Sales of second-degree battery—which required knowledge that the victim was a police officer in the line of duty—and convicting him of third-degree battery. Ark. Code Ann. § 5-13-203 (Repl. 2006); *Davis v. State*, 97 Ark. App. 6, 10–11, \_\_\_\_

S.W.3d \_\_\_, \_\_\_ (2006). Sales knew that Officer Clark was acting in his official capacity when Sales fought with Clark and hit him in the head with the sock.

Affirmed; motion to withdraw granted.

ROBBINS and GRIFFEN, JJ., agree.